IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 100 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

AMBALAL SARABHAI D TRUST

Appearance:

1. INCOME TAX REFERENCE No. 100 of 1991
MR MANISH R BHATT for Petitioner No. 1
MR BD KARIA for MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

In view of the orders passed by the Hon'ble Supreme Court in Civil Appeals Nos. 3576 and 3577 of 1989 dated 26.9.1989, at the instance of the revenue, the following questions have been referred to this court for its opinion under the provisions of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), which arise out of an order dated 27.8.1983 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C'.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion and the resolution dated 31st March 1974 and the letter dated 1.4.1974 changed the provisions of law, clause 1(i)(a) of the Deed of Trust, when the Deed of Trust did not confer authority on the trustees to amend the Deed of Trust?

2. Whether, on the facts and in the circumstances of the case, the provisions of Section 164 of the Act did not apply to the assessee by reason of the Resolution passed by the trustees on 31st March 1974 even though according to the Tribunal the said Section 164 did apply to the Deed of Trust alone?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the character of the discretionary trust was changed by the resolution dated 31st March, 1974 passed by the Trustees of the Trust?

4. Whether the Appellate Tribunal has not erred in law and on facts in dismissing the miscellaneous application filed by the revenue contending that the Tribunal had not dealt with one ground, raised in the ground of appeal, while deciding the appeal?

5. Whether, the ground, the learned AAC erred in law and on the facts of the case in holding that the resolution containing the date of 31st March, 1974 was legal, proper, valid and effective and hence application of the rate of 65% under section 164 on the income was not justified, is not wide enough to cover the controversy regarding existence or the non-existence of the

resolution and the Tribunal was justified in rejecting the reference application of the revenue arising out of Miscellaneous Application filed by it?"

2. Senior Standing Counsel Shri M.R. Bhatt has appeared for the applicant revenue, whereas learned advocate Shri B.D. Karia has appeared for the respondent assessee.

3. The facts giving rise to the present reference, in a nutshell, are as under :

3.1 The respondent assessee is a discretionary trust. We are concerned with Assessment Year 1975-76, the previous year thereof being the year commencing from 1.4.1974 to 31.3.1975. The respondent trust, though a discretionary trust, passed a resolution on 31.3.1974 to the effect that the income of the trust arising for the previous year ending on 31.3.1975 be paid to Smt. Mrinalini V. Sarabhai, one of the beneficiaries of the trust, by debiting the said amount to the Income & Expenditure Account in the books of the trust. Necessary intimation of the above fact had been given to the concerned beneficiary.

3.2 In pursuance of the said resolution, the income for the said year had been given to the beneficiary. The respondent trust, in view of the fact that the entire income had been given to the beneficiary, had filed an income tax return showing the total income as 'nil'. The Income-tax Officer was of the view that the trust was a discretionary trust and the income, which had arisen, was liable to be taxed in the hands of the trust in view of the provisions of sec. 164 of the Act. The plea of the assessee that a resolution was passed by the assessee trust to the effect that the entire income should be given to the concerned beneficiary and, therefore, the income should not be taxed in the hands of the trust, was rejected by the Income-tax Officer.

3.3 Being aggrieved by the assessment order, the assessee had filed an appeal before the Appellate Assistant Commissioner, who allowed the appeal. Being aggrieved by the order passed by the AAC, the revenue had filed an appeal before the Tribunal. The Tribunal confirmed the order passed by the AAC. A reference application filed before this court had been rejected and, therefore, the revenue had filed an SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court

ultimately directed the Tribunal, by an order dated 26.9.1989, to refer the questions referred to hereinabove, to this court for its opinion.

4. Learned Sr. Standing Counsel Shri M.R. Bhatt appearing for the applicant-revenue has submitted that looking to the fact that the respondent assessee was a discretionary trust, the ITO had rightly assessed the income of the assessee trust for the Assessment Year 1975-76 in the hands of the assessee. According to him, once the trust was a discretionary trust, it was not open to the trust to pass any resolution or to adopt any course so as to make it a specific trust. It has been, therefore, submitted by him that looking to the law laid down by this court in the case of CIT v. Ambalal Sarabhai D. Trust No. 5, 231 ITR 540, the course adopted by the ITO was just and proper. It has been, therefore, submitted by him that the Tribunal erred in upholding the order passed by the AAC, whereby the appeal filed against the order of the ITO had been set aside.

5. Shri Bhatt, learned Sr. Standing Counsel, has also submitted that there is nothing on record to show that the income, which has been taxed in the hands of the assessee trust, had also been taxed in the hands of the beneficiary. According to him, in this reference this court has to look at the questions referred to it by the Hon'ble Supreme Court and answer the same. As there is nothing on record to show that the said income had already been taxed in the hands of the beneficiary, according to him, this court need not look into the said argument of the respondent assessee.

6. On the other hand, learned advocate Shri B.D. Karia appearing for the respondent assessee has vehemently submitted that it was not open to the revenue to assess the income of the trust, which had already been diverted to one of the beneficiaries and had been taxed in the hands of the beneficiary. It has been submitted by him that a resolution had already been passed on 31.3.1974, whereby the assessee trust had decided to disburse the income of the assessee trust for the previous year 1974-75 to the beneficiary named hereinabove. As the said income had already been taxed in the hands of the beneficiary, according to him, it was not open to the revenue to tax the income in the hands of the assessee trust also.

7. He has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of Jyotendrasinhji v. S.I. Tripathi and others, 201 ITR 611, to substantiate

his argument that the revenue had an option to tax income in the hands of the beneficiary or the trust.

8. We have heard the learned advocates and have also perused the record and the judgments referred to by the learned advocates.

9. Looking to the fact that the respondent trust is a discretionary trust, which had passed a resolution dated 31.3.1974, whereby it decided to disburse the income for the Assessment Year 1975-76 to the above named beneficiary and looking to the law laid down by this court in the case of CIT v. Ambalal Sarabhai D. Trust No. 5 (supra), it is clear that, by virtue of the said resolution, an effort was made to convert the nature of the trust from discretionary to specific. According to the law laid down by this court in the case of CIT v. Ambalal Sarabhai D. Trust No. 5 (supra), it was not open to it to do so and the revenue had rightly taxed the amount of income, which the respondent assessee had earned for the Assessment Year 1975-76, in the hands of the trust.

10. So far as the argument of learned advocate Shri Karia with regard to taxing the same income of the trust twice, it may be noted here that there is nothing on record to show that the income of the assessee trust for the Assessment Year 1975-76 had already been taxed in the hands of the beneficiary. Jurisdiction of this court is very limited in this case and, in our opinion, it would not be proper for us to look at the record, which is not before this court or which was not before the Tribunal.

11. In view of the aforestated clear legal position, we answer the questions as under :

12. So far as the 1st, 2nd and 3rd questions are concerned, we answer the same in the negative, i.e., against the assessee and in favour of the revenue.

13. So far as questions Nos. 4 and 5 are concerned, in our opinion, it is not necessary to answer the same in view our answer to the first three questions, and more particularly when the said questions had arisen in pursuance of a misc. application filed by the revenue for rectification of the order passed by the Tribunal. We, therefore, decline to answer questions Nos. 4 and 5.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

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